IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 19TH MARCH 2007 / 28TH PHALGUNA 1928

Co.Appeal.No. 8 of 2007()

AGAINST THE ORDER IN Co.A.NO.641/05 in CP.29/2005 Dated 30/06/2006

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APPELLANT/APPLICANT

DANIEL.V.D., S/O.DEVANGATHAN,
WARD NO.15, BEACH ROAD, PALLIPRAM PANCHAYAT,
CHERAI, ERNAKULAM.

BY ADV. SRI.P.SANJAY
SRI.A.PARVATHI MENON

RESPONDENTS/RESPONDENTS:
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1. M/S.SOUTHERN HIMALAYA CHITTIES PVT. LTD., X/334, PUNNAKKALAYIL BUILDINGS, CHERAI, ERNAKULAM.

2. S.I. OF POLICE, CHERANELLOOR POLICE STATION.

R1 BY ADV. SRI.P.RAMAKRISHNAN
R2 BY GOVERNMENT PLEADER SRI SANDESH RAJA

THIS COMPANY APPEAL HAVING COME UP FOR ADMISSION ON 19/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMAN & ANTONY DOMINIC,JJ.

CO. APPEAL.NO.8 OF 2007

Dated this the 19th day of March, 2007

JUDGMENT

Raman, J.

Appellant is stated to be the registered owner of a motor vehicle. The dispute centres round the ownership of the vehicle in question. Proceedings are pending against the Company, M/s. Southern Himalaya Chitties Pvt. Ltd.. A Receiver was appointed, who took possession of the vehicle in question. The appellant preferred an application under Rule 106 of the Companies Court Rules, 1959 read with Section 450 of the Companies Act, 1956 inter alia seeking for a direction to release the vehicle, namely, "Qualis Van" bearing Regn.No.KL AD 707. The learned Single Judge by its order in appeal was not, prima facie, satisfied that the appellant/petitioner could establish the ownership of the vehicle. Pending further consideration of the matter, it is ordered that it will not be in the interest of either parties to keep the vehicle in its present condition and therefore the appellant/petitioner has given an option to execute a kychit to the Receiver with two solvent sureties for the value of the vehicle as determined by the Receiver and further directed the appellant to pay an

amount of Rs.15,000/- per month to the Receiver. With such condition it is directed that the vehicle will be released to the appellant/petitioner.

2. According to the appellant, the direction to pay an amount of Rs.15,000/- is not in any way justified. According to him, the vehicle was purchased with his own funds and at any rate he having to comply with the condition, namely to execute a kychit with two solvent sureties, that will safeguard the interest of all concerned. It is also stated that this vehicle is only a private vehicle and not a taxi.

3. Having heard both sides and in view of the fact that the question regarding the ownership of the vehicle has not been finally decided by the learned Single Judge, the direction to the appellant to pay Rs.15,000/- per month requires suitable modification. Over and above the other conditions already stipulated by the learned Single Judge, there will be a further direction that the vehicle shall not be transferred or encumbered by the appellant without the permission of the Company Court and an endorsement to that effect shall be made in the RC Book by the R.T.O. concerned. In stead of paying an amount of Rs.15,000/- per month, the appellant/petitioner is directed to furnish adequate security for the value of the vehicle in question to the satisfaction of the Company Court either

by way of bank guarantee or by way of immovable property. For the limited purpose of compliance with the direction we tentatively fix an amount of Rs.3,50,000/- (Rupees three lakhs and fifty thousand) as the value of the vehicle.

Appeal is disposed of as above.

P.R.RAMAN,
Judge.

ANTONY DOMINIC,
Judge.

kcv.